IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

PRESENT
THE HON'BLE MR JUSTICE R.SUBHASH REDDY
WRIT PETITION NO :23493 of 1997

Dated 31st January, 2007

Between

M/s. Jagadeswari Ice Factory, Vijayagopalapuram, Nellore, rep by its Partner Ch. Kumar Sekhar

...Petitioner

and

The Superintending Engineer (Operation Circle) APSEB, Nellore Nellore District and ors.

...Respondents.

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 23493 of 1997

ORDER:

In this Writ Petition, the petitioner has questioned the order dated 1-9-1997 passed by the Superintending Engineer, Operations, APSEB, Nellore.

The petitioner is a registered partnership firm, engaged in the business of manufacture of ice in the Nellore town. The said unit was registered as a small scale unit vide registration No.01/16/07455/PMT, dated 11-4-1996. The said unit was set up in the premises bearing Door No.4-354, Vijayagopalapuram in Nellore town. In the said premises, earlier, there was an oil rotary unit and after Ice

factory was established, the petitioner has continued with the same service connection provided to the said oil rotary unit and sought for change of contacted load and also change of use from oil rotary to manufacture of ice blocks. The same was approved on 8-4-1996.

Basing on the decision of the State Government, the then Electricity Board had issued B.P.Ms. 51, dated 24-5-1993, providing the benefit of 25% rebate on energy consumption and monthly minimum charges. On an application filed by the petitioner seeking benefit of such rebate, the Superintending Engineer, Operations, Nellore, based on the eligibility certificate dated 15-5-1996 issued by the General Manager, District Industries Center, issued Proceedings No.SE.O.NLR.AO/R.JAO/LT/U2/D.No.1741/96, dated 24-6-1996 extending the benefit of 25% rebate on energy consumption and the monthly minimum charges to the petitioner-unit for a period of three years from 1-4-1996 to 31-3-1999. But however, subsequently, by impugned order, the said order giving rebate was cancelled on the ground that the three years period of supply to service connection No.39060/N2/Nellore released on 25-3-1988 for oil rotary unit is over by 24-3-1991, and, as such, the petitioner is not eligible for rebate.

It is submitted by the learned counsel for the petitioner that there is no valid reason for cancelling the rebate. It is the case of the petitioner that the petitioner-unit is a newly setup industry, and, merely because the service connection was released to oil rotary unit on 25-3-

1988 cannot be a ground for cancellation of the same on the expiry of three years from the said date, as subsequently, on the application made by the petitioner, it was changed to the petitioner-firm for manufacture of ice blocks. It is the further case of the petitioner that, in any event, the impugned order ought not to have been passed without giving prior notice and opportunity.

On the other hand, it is submitted by the learned Standing Counsel appearing for the respondents that the petitioner-unit is not a new industry and it has continued the activities on the same service connection, which was released on 25-3-1988. It is submitted that as per the orders in B.P.Ms. No. 51, dated 24-5-1993, petitioner is not eligible for the rebate and as such, the impugned order is passed.

As the demand was made to recover the amount covered by rebate, this Court granted interim order dated 01-01-1998, subject to payment of 50% of the amount demanded within a period of one month from the date of the said order. It is submitted by the learned counsel for the petitioner that the said amount was deposited within the time stipulated by this Court.

From the counter affidavit and submissions made by the learned Standing Counsel for the respondents, it is not in dispute that impugned order of cancellation was passed without notice and opportunity to the petitioner. Though it is the case of the petitioner that the ice factory set up by

the petitioner is a new industry and the petitioner is entitle for the benefit of 25% rebate, but however, it is the case of the respondents that the petitioner-unit had continued with earlier service connection released on 25-3-1988 to the rotary unit, and in that view of the matter, the petitioner-unit cannot be treated as new industry for extending the benefit of 25% rebate. It is to be seen, once the orders are passed by the Superintending Engineer, Operations, basing on the eligibility certificate issued by the General Manager, District Industries Centre, Nellore, by recording a finding that the petitioner is eligible for rebate, vide proceedings D.Dis No.2006/B3/96, dated 15-5-1996, if the said benefit of rebate is sought to be cancelled, it is obligatory on the part of the respondents to issue prior notice and opportunity before passing the order of cancellation. But, no such notice is stated to have been issued to the petitioner before cancellation. The unilateral cancellation by the respondents amounts to violation of the Principles of Natural Justice. If for any reason, the petitioner is not eligible for rebate, the respondents ought to have notified the reasons to the petitioner and ought to have heard the objections before taking appropriate decision. From a perusal of the impugned order, there is no such reference and it is fairly submitted by the learned Standing Counsel for the respondents that no such opportunity was given to the petitioner. As much as the impugned order was passed without notice and opportunity to the petitioner, without going into the merits of the case, I deem it appropriate to set aside the order dated 1-9-1997 passed by the

Superintending Engineer, Operations, APSEB, Nellore and remit the matter back for fresh consideration by the said authority. The impugned proceedings dated 1-9-1997 shall be treated as show cause notice and it is open for the petitioner to file objections within a period of six weeks from the date of receipt of a copy of this order, reiterating its stand with regard to its eligibility for rebate as per the orders dated 15-5-1996 in D.Dis.No.2006/B3/96. If such explanation is filed within the above said period, the respondents shall consider the same and pass appropriate orders. If the petitioner fails to submit the explanation as stated above, the respondents shall consider the matter afresh and pass appropriate orders on its own merits. The amount, which was paid pursuant to the interim order passed by this Court, shall be subject to the final orders to be passed by the first respondent afresh.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

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JUSTICE R. SUBHASH REDDY

DATE: 31-01-2007.
Note: CC within one week.
(BO)
Msnr.